

But the petitioner blends all the transactions in relation to the bill of exchange, with the accounts of Samuel C. Hepburn, as executor, and thus attempts not only to falsify an entry in his hand-writing, to shew that no such payment, as there stated, was in fact made; but he also uses the bill of exchange to swell the debt said to be due from the Mollisons; and so to increase the demand against the State.

The holders of the bill instituted suit upon it against Thomas the endorser, and recovered, according to the Act for ascertaining what damages shall be allowed on protested bills of exchange; 1715, ch. 7; 1785, ch. 38; over and above the principal with costs of protest and suit, twenty per cent. damages. Samuel C. Hepburn being liable, as drawer, for the whole, he accordingly paid the whole amount. And now the petitioner contends, that those damages and costs must be considered as a part of his claim against the Mollisons and the State. But I know of no rule of law by which the drawee who refuses to accept a bill, even where he has funds in his hands at the time, can be charged with the damages and costs of protest. And if the Mollisons cannot be so charged, then there certainly can be no claim, on that account, against the State, who stands in the place of the Mollisons only, even supposing those damages and costs of protest to have been actually paid out of the estate of the late John Hepburn. Upon Samuel C. Hepburn's receiving notice of the non-acceptance of the bill, his right to sue, which by drawing it, he might be said to have tacitly consented thus far to suspend, * was completely
108 restored; and the express object of giving him notice was to enable him at once to collect his debt, or to draw his effects out of the hands of the Mollisons; which, at the time he received the notice, amounted to \$1,404.44, with interest from the first of April, 1776, when the whole debt became due.

Not satisfied with pressing the transaction of the bill of exchange for the purpose of adding to the amount of the demand against the Mollisons and the State, the petitioner attempts to use it as a means of accounting for the long standing of his claim, for more than half a century. The debt became due on the first of April, 1776, and the Mollisons might have been then, or at any time after that, sued for it, in England where they resided, or their effects might have been attached here. But it is urged, that between the years 1779 and 1789, the executor had no claim against the Mollisons, he having lost it by the sale of the bill of exchange, and it only having been revived in him by his payment of that bill; or in other words, that the drawing of the bill suspended his right to sue until after its being protested he had paid the whole amount on the 16th of June, 1789; and thus the lapse of the first thirteen years is happily, though singularly accounted for.